

SEMINOLE COUNTY GOVERNMENT AGENDA MEMORANDUM

SUBJECT: Lake Mills/Application for Aquatic Weed Control MSBU – Prepayment Agreement

DEPARTMENT: Fiscal Services

DIVISION: MSBU Program

AUTHORIZED BY: Lisa H. Spriggs

CONTACT: Kathy Moore EXT. 7179

Agenda Date 5/24/05 **Regular** ☐ **Consent X Work Session** ☐ **Briefing** ☐

Public Hearing – 1:30 ☐ **Public Hearing – 7:00** ☐

MOTION/RECOMMENDATION:

Authorize the MSBU Program to continue working with the applicant relative to the noted aquatic weed control efforts by providing approval of the funding agreement.

BACKGROUND:

An application requesting aquatic weed control improvements for Lake Mills was received from a property owner (Dave Axel) on November 17, 2004. At the January 25, 2005, BCC meeting, the Board authorized the MSBU Program to deviate from standard MSBU procedures so that specific aquatic weed control efforts could be implemented in advance of the standard process for establishing a special assessment district. Continuation of the project proposed to the BCC in January was delayed until April 8, 2005, at which time the applicant submitted the information (barrier location/design/funding source) necessary to move forward on the project.

In January, when this project was proposed to the BCC, emphasis was placed on the importance of introducing the fish into Lake Mills during the cooler months of the year. Introduction of the fish during the cooler months was advised due to the hydrilla growth patterns and the importance of offering optimal transportation conditions for the fish. The transportation of the fish during the summer months will present the risk of higher mortality rates among the fish.

The need for triploid grass carp to control the growth of noxious aquatic growth is considered to be on-going, and the failure to add the fish, even assuming a high mortality rate would be a greater detriment to the lake than the risk of higher fish mortality rate resulting from warmer weather conditions. The applicant/funding sources are aware of the risks.

The attached agreement was prepared by the County Attorney's office in support of the project and funding expectations. The agreement mirrors the recommendations set forth at the January 25 BCC meeting.

The proposed area is in Commission District 1.

Reviewed by:	
Co Atty:	<u>AM</u>
DFS:	
Other:	
DCM:	<u>SS</u>
CM:	<u>KL</u>
File No. <u>FSC 10</u>	

LAKE MILLS FISH/BARRIER FUNDING AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, 2005, by and between the **MILLS COVE BOAT RAMP ASSOCIATION, INC.**, whose address is 600 Lake Mills Road, Chuluota, Florida 32766, hereinafter referred to as "MILLS COVE", and **DAVE AXEL**, an individual, whose address is 1757 W. Broadway Street, Suite 1, Oviedo, Florida 32765, hereinafter referred to as "AXEL", and **SEMINOLE COUNTY**, a political subdivision of the State of Florida, whose address is Seminole County Services Building, 1101 East First Street, Sanford, Florida 32771, hereinafter referred to as the "COUNTY".

W I T N E S S E T H:

WHEREAS, MILLS COVE and AXEL wish to have fish barriers and grass carp installed in Lake Mills for aquatic weed control; and

WHEREAS, under normal circumstances, such installation would be funded through establishment of a Municipal Services Benefit Unit (MSBU); and

WHEREAS, the procedures for establishing an MSBU have not yet been initiated; and

WHEREAS, the Board of County Commissioners have deemed it to be essential to the public health, safety and welfare for the fish barrier and grass carp to be installed in Lake Mills now rather than at a later date; and

WHEREAS, MILLS COVE and AXEL wish to pay to the COUNTY such funds as are necessary to install the fish barrier and grass carp at the present time,

NOW, THEREFORE, in consideration of the mutual understandings and covenants set forth herein, MILLS COVE and AXEL and the COUNTY hereby agree as follows:

1. **PAYMENT OF FUNDS.** MILLS COVE and AXEL hereby agree to pay to the COUNTY, upon execution of this Agreement, the following amounts:

MILLS COVE	\$7,000.00
AXEL	<u>\$2,581.00</u>
TOTAL:	\$9,581.00

2. **COUNTY'S RESPONSIBILITIES.** The COUNTY agrees to use the \$9,581.00 to be paid by MILLS COVE and AXEL to acquire, install, maintain and clean, using the COUNTY's competitive bidding procedures, fish barriers (3) and triploid grass carp (2 per acre) in Lake Mills in Seminole County. Other than described herein, the COUNTY shall not be obligated to provide MILLS COVE or AXEL with any other services, nor shall the COUNTY be held responsible for failure of the installed fish barrier or the grass carp to remedy the aquatic weed problems in Lake Mills.

3. **REFUNDS.** In the event that an MSBU is created, supported by an affirmative petition vote of 65% of the benefiting property owners and approval via ordinance enacted by the Seminole County Board of County Commissioners to fund acquisition, installation, monitoring, cleaning and maintenance of fish barriers and grass carp for aquatic weed control in Lake Mills, then the COUNTY shall refund the \$7,000.00 to MILLS COVE and \$2,581.00 to AXEL. Said amounts shall be paid on or before December 15 in the year in which the non-ad valorem assessments to individual properties in the MSBU are initially assessed on the

property tax bill. If such an MSBU is not established as described above within one year of the date the COUNTY executes this Agreement, then no refund shall be due MILLS COVE and AXEL. In no event shall the COUNTY be obligated to pay or refund to MILLS COVE or to AXEL any amount exceeding \$7,000.00 or \$2,581.00, respectively.

4. INDEMNIFICATION OF COUNTY.

(a) MILLS COVE and AXEL shall indemnify and hold harmless and defend COUNTY, its officers, agents and employees from and against any claim, demand or cause of action of whatsoever kind or nature arising out of, allegedly arising out of, or related to the performance of services under this Agreement.

(b) MILLS COVE and AXEL specifically acknowledge that pursuant to the recommendations made by the Florida Fish and Wildlife Conservation Commission (FFWCC), the optimal time to place grass carp in Lake Mills is during the cooler months of the year and that introducing the carp into the lake during the months of June, July and August can be harmful to the fish and result in a much lower survival rate. MILLS COVE and AXEL further acknowledge that by their participation in this Agreement it is their desire that the COUNTY install the grass carp during June, July and/or August, despite the low rate of fish survival during these months, and will hold the COUNTY harmless from any harm or lack of success to the aquatic weed control project resulting therefrom.

5. SERVICES NOT PROVIDED FOR. No services not specifically provided for herein shall be honored or performed by the COUNTY.

6. **PUBLIC RECORDS LAW.** MILLS COVE and AXEL acknowledge COUNTY's obligations under Article 1, Section 24, Florida Constitution and Chapter 119, Florida Statutes, to release public records to members of the public upon request. MILLS COVE and AXEL acknowledge that COUNTY is required to comply with Article 1, Section 24, Florida Constitution and Chapter 119, Florida Statutes, in the handling of the materials created under this Agreement and that said statute controls over the terms of this Agreement.

7. **NOTICES.** Whenever any party desires to give notice unto another, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the parties for whom it is intended at the place last specified and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this Section. For the present, the parties designate the following as the respective places for giving of notice, to wit:

For COUNTY:

Fiscal Services Department
1101 E. First Street
Sanford, Florida 32771

For MILLS COVE:

Mills Cove Boat Ramp Association, Inc.
600 Lake Mills Road
Chuluota, Florida 32766

For AXEL:

Dave Axel
1757 W. Broadway Street, Suite 1
Oviedo, Florida 32765

8. **RIGHTS AT LAW RETAINED.** The rights and remedies of the COUNTY provided for under this Agreement are in addition to any other rights and remedies provided by law.

9. **COMPLIANCE WITH LAWS AND REGULATIONS.** In providing all services pursuant to this Agreement, the parties shall abide by all statutes, ordinances, rules, and regulations pertaining to, or regulating the provisions of, such services, including those now in effect and hereafter adopted. Any violation of said statutes, ordinances, rules, or regulations shall constitute a material breach of this Agreement, and shall entitle any party to terminate this Agreement immediately upon delivery of written notice of termination to the other parties.

10. **CONFLICT OF INTEREST.**

(a) MILLS COVE and AXEL agree that they will not engage in any action that would create a conflict of interest in the performance of their obligations pursuant to this Agreement with the COUNTY or which would violate or cause others to violate the provisions of Part III, Chapter 112, Florida Statutes, relating to ethics in government.

(b) MILLS COVE and AXEL hereby certify that no officer, agent or employee of the COUNTY has any material interest (as defined in Section 112.312(15), Florida Statutes, as over 5%) either directly or indirectly, in the business of either MILLS COVE or AXEL to be conducted here, and that no such person shall have any such interest at any time during the term of this Agreement.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement for the purposes stated herein.

ATTEST:

MILLS COVE BOAT RAMP ASSOCIATION, INC.

Secretary

By: _____
President

(CORPORATE SEAL)

Date: _____

Witness

By: _____
DAVE AXEL

Witness

Date: _____

ATTEST:

BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA

MARYANNE MORSE
Clerk to the Board of
County Commissioners of
Seminole County, Florida.

By: _____
CARLTON HENLEY, Chairman

Date: _____

For the use and reliance
of Seminole County only.

Approved as to form and
legal sufficiency.

As authorized for execution by
the Board of County Commissioners
at their _____, 20____,
regular meeting.

County Attorney

AC/lpk
5/4/05
lake mills funding agt

DEPARTMENT OF FISCAL SERVICES

MSBU PROGRAM



May 5, 2005

Mr. Dave Axel
Axel Real Estate, Inc.
1757 W. Broadway St., Ste 1
Oviedo, FL 32765

RE: Lake Mills – Aquatic Weed Control

Dear Mr. Axel,

Enclosed is the agreement prepared by the County Attorney's office for use with the Lake Mills project. The pre-payment amount was calculated as follows.

Expenses:

Barriers (3)	\$	3,650.00
Triploid Grass Carp (2 per acre)	\$	3,860.00
Lake Monitoring & Barrier Inspect/Clean	\$	1,200.00*
	\$	8,710.00
Administrative Fees (@10%)	\$	871.00
TOTAL EXPENSES:	\$	9,581.00

*3 month@\$400

May 24th will be the first available BCC meeting date at which this agreement can be added to the agenda for BCC consideration. The signed agreement document (signed by those providing the funds) should be submitted to the MSBU Program by May 18. Given BCC approval, the payment check needs to be available on May 24, shortly there after for purchase agreements to be implemented with Aquatic Systems.

In advance of the May 24 Board meeting, the County's Purchasing & Contracts Division will work with Aquatic Systems in effort to have a revised price quote and agreement document ready to be implemented following BCC approval of the agreement and receipt of funding.

If you have questions or comments, please call.

Sincerely,

Kathy Moore
MSBU Program Manager